S.B.Cr.Misc. Petition No. 1081/2004

Date of order : 10.1.2005

HON'BLE MR.H.R.PANWAR, .J.

Mr. Pradeep Shah, for the petitioner

Heard learned counsel for the petitioner.

By this Criminal Misc. Petition under Section 482 Cr. P.C. the petitioner has challenged the order dated 18.10.2004 passed by the Additional Chief Judicial Magistrate, No.2, Udaipur (for short "the trial court") whereby the trial court granted bail under Section 438 Cr.P.C. to respondent No.2 Someshwar Sharma. It appears that respondent No.2 earlier filed a bail application under Section 438 Cr.P.C. before this court being S.B. Cr. Misc. Bail Application No. 3018/2004, which came to be rejected by order dated 09.09.2004. However, subsequently the respondent No.2 filed Second Bail Application before this Court being S.B. Cr. Misc. IInd Bail Application No. 3623/2004. The second bail application was not decided on merit. Learned counsel appearing for respondent No.2, who was petitioner in the bail applications submitted that the accused would appear before the trial court and move a regular bail. In view of the statement of the learned counsel, the second bail application was also rejected. However, it was observed that if the petitioner surrenders and moves a regular bail before the trial court, the trial court shall decide the same in accordance with law on the same day. Thus, it was made clear that the trial court shall decide the bail application if the accused surrenders before the trial court in accordance with law. At any rate, the trial court was not directed to release the accused. However, after considering the facts and circumstances of the case and the fact that co-accused Lokesh was arrested and nothing could be recovered from him, the trial court

was of view that there is no chance of any recovery and rejected the request of the Investigating Officer for remanding the accused-respondent No.2 to police custody and released him on bail.

I do not find any error in the order impugned, more so the petitioner has not sought the cancellation of bail. In the circumstances it is not a fit case to interference with the order impugned. Accordingly, the petition stands dismissed.

(H.R.PANWAR), J.

Rm/